

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Rafeal Tunde Solebo El,
 Plaintiff,

vs.

State Of Nevada,
 Defendant.

Case No. 2:22-cv-01256-CDS-VCF

Order

And

Amended Order

Motion to Change Name on the Docket (ECF No. 3); Application to Proceed in Forma Pauperis (EFC No. 10)

I previously ordered pro se plaintiff Rafeal Tunde Solebo El to either pay the filing fee or file an application to proceed in forma pauperis. ECF No. 9. I also denied plaintiff's motion to change his name on the docket, but the Clerk of Court did not docket that portion of my order. For brevity I will not repeat my analysis of his motion to change name here in this order. I amend my previous order (ECF No. 9) to clarify that his motion to change his name is denied, for all the reasons I previously outlined. I also deny his IFP application without prejudice.

Discussion

Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action "without prepayment of fees or security thereof" if the plaintiff submits a financial affidavit that demonstrates the plaintiff "is unable to pay such fees or give security therefor." The Ninth Circuit has recognized that "there is no formula set forth by statute, regulation, or case law to determine when someone is poor enough to earn IFP status." *Escobedo v. Applebees*, 787 F.3d 1226, 1235 (9th Cir. 2015). An applicant need not be destitute to qualify for a waiver of costs and fees, but he must demonstrate that because of his poverty he cannot pay

1 those costs and still provide himself with the necessities of life. *Adkins v. E.I DuPont de Nemours &*
2 *Co.*, 335 U.S. 331, 339 (1948). If the court determines that an individual's allegation of poverty is
3 untrue, “it shall dismiss the case.” 28 U.S.C. § 1915(e)(2).

4 The applicant's affidavit must state the facts regarding the individual's poverty “with some
5 particularity, definiteness and certainty.” *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)
6 (citation omitted). If an individual is unable or unwilling to verify his or her poverty, district courts have
7 the discretion to make a factual inquiry into a plaintiff's financial status and to deny a request to proceed
8 in forma pauperis. See, e.g., *Marin v. Hahn*, 271 Fed.Appx. 578 (9th Cir. 2008) (finding that the district
9 court did not abuse its discretion by denying the plaintiff's request to proceed IFP because he “failed to
10 verify his poverty adequately”). “Such affidavit must include a complete statement of the plaintiff's
11 personal assets.” *Harper v. San Diego City Admin. Bldg.*, No. 16cv00768 AJB (BLM), 2016 U.S. Dist.
12 LEXIS 192145, at 1 (S.D. Cal. June 9, 2016). Misrepresentation of assets is sufficient grounds in
13 themselves for denying an in forma pauperis application. *Cf. Kennedy v. Huibregtse*, 831 F.3d 441, 443-
14 44 (7th Cir. 2016) (affirming dismissal with prejudice after litigant misrepresented assets on in forma
15 pauperis application).

17 The District of Nevada has adopted three types of IFP applications: a “Prisoner Form” for
18 incarcerated persons and a “Short Form” (AO 240) and “Long Form” (AO 239) for non-incarcerated
19 persons. The Long Form requires more detailed information than the Short Form. The court typically
20 does not order an applicant to submit the Long Form unless the Short Form is inadequate, or it appears
21 that the plaintiff is concealing information about his income for determining whether the applicant
22 qualifies for IFP status. When an applicant is specifically ordered to submit the Long Form, the correct
23 form must be submitted, and the applicant must provide all the information requested in the Long Form
24 so that the court is able to make a fact finding regarding the applicant's financial status. See e.g. *Greco v.*
25

1 *NYE Cty. Dist. Jude Robert Lane*, No. 215CV01370MMDPAL, 2016 WL 7493981, at 3 (D. Nev. Nov.
2 9, 2016), report and recommendation adopted sub nom. *Greco v. Lake*, No. 215CV001370MMDPAL,
3 2016 WL 7493963 (D. Nev. Dec. 30, 2016).

4 Plaintiff submitted the Short Form IFP application. ECF No. 10. In response to almost every
5 single question, plaintiff responded “N/A” or non-applicable. In response to question number eleven,
6 plaintiff swears, under penalty of perjury, that he does not on any assets or possess any “real money” to
7 pay for these proceedings. *Id.* He does not provide any information in his sworn application regarding
8 how he lives with no money and no bills. *Id.*

9 I find that it appears that plaintiff is concealing information about his household income. I cannot
10 determine whether the applicant qualifies for IFP status. I will give plaintiff one opportunity to file a
11 complete IFP application. I order that the plaintiff must complete the Long Form application. He may
12 not respond that any of questions are “not applicable” to him. He must provide an explanation for each
13 of the questions. Since he must complete the Long Form, plaintiff is required to provide comprehensive
14 information regarding his sources of income, employment history, bank accounts, assets, monthly
15 expenses, age, how he pays her bills, and his years of schooling, among other things.

16 I deny plaintiff’s IFP application without prejudice. I give plaintiff thirty days to file an updated
17 IFP application. Plaintiff must fully answer all applicable questions and check all applicable boxes.
18 Plaintiff may alternatively pay the filing fee in full. Since I deny plaintiff’s IFP application, I do not
19 screen his complaint now.
20

21 ACCORDINGLY,
22 I ORDER that Robinson’s application to proceed in forma pauperis (ECF No. 10) is DENIED without
23 prejudice.
24

25 I FURTHER ORDER that plaintiff Solebo El has until Thursday, January 5, 2023, to file an

1 updated IFP application using the Long Form or pay the filing fee as specified in this order. Failure to
2 timely comply with this Order may result in case closure or a recommendation for dismissal with
3 prejudice.

4 I FURTHER ORDER that plaintiff's motion to change his name on the docket (ECF No. 3) is
5 DENIED, which amends and clarifies my previous order denying his motion (ECF No. 9).


6 **NOTICE**

7 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
8 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
9 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
10 may determine that an appeal has been waived due to the failure to file objections within the specified
11 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985).

12 This circuit has also held that (1) failure to file objections within the specified time and (2)
13 failure to properly address and brief the objectionable issues waives the right to appeal the District
14 Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d
15 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).
16 Pursuant to LR IA 3-1, the plaintiff must immediately file written notification with the court of any
17 change of address. The notification must include proof of service upon each opposing party's attorney,
18 or upon the opposing party if the party is unrepresented by counsel. Failure to comply with this rule may
19 result in dismissal of the action.
20

21 IT IS SO ORDERED.

22 DATED this 30th day of November 2022.

23 
24 _____
25 CAM FERENBACH
UNITED STATES MAGISTRATE JUDGE